

Thomas Jefferson, Inc.

TECHNICAL SERVICE COMPANY  
3229 WATERLICK ROAD  
LYNCHBURG, VA 24502  
804-237-0515  
OR 237-2044

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

# The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Agency Communication Requirements Through the Year 2010

WT Docket No. 96-86

DOCKET FILE COPY ORIGINAL

**Comments of the Association of  
Federal Communications Consulting Engineers**

These comments on the Notice of Proposed Rule Making (NPRM) in the above captioned proceeding are submitted by a female owned Virginia corporation, Thomas Jefferson Inc.

Thomas Jefferson pleads that the Commission should emphasize placing additional local government and public safety spectrums in the hands and responsibility of the multi-use common carriers with the caveat that a priority access procedures and protocol is implemented.

There has developed an apparent lack of prudent responsible radio management as a result of undo influence by the major demand supplier. This has manifested itself by undo embedded priority protocol and an ever increasing substantial pollution of the market place.

To support the second thesis attached please find appropriate public documents. In addition look at the public records of the following.

Valdosta/Loundes, GA, where the principal supplier participated in the internal selection of the consultant.

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Cincinnati Airport where the principal supplier introduced totally erroneous comments such that although winnable, it was less costly to re-bid the project. Unnecessary costs.

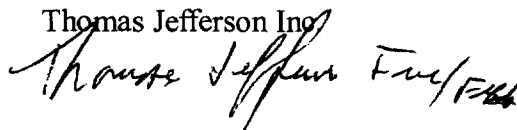
City of Baltimore, MD, used a non-sealed non-professional priority bid documents for a sole source vendor bid. The conditions of these documents cannot be met even today.

Henrico County, VA used non-sealed non-professional documents for a sole source bid, etc., etc., etc., Gainesville, AL, Loudon County, VA, and Fairfax County, VA.

In conclusion, Bill Clinton, Janet Reno and Reed Hunt have failed to protect the public interest against undue influence in the local government market place. Thomas Jefferson, Inc. calls for a Congressional investigation and appropriate action against Bill Clinton, Janet Reno and Reed Hunt as unfit for public office as a result of in-action.

One of our most precious natural resources should not be entrusted to a non-orderly market place.

Signed,

Thomas Jefferson Inc.  


Submittal Date 10-15-96

Attached: Court Case - Birmingham, AL  
Court Case - The Southern Company  
Ericsson, Inc. Field Mailing

Copies: Docket 96-86 (eight)  
Senator John Warner  
Senator Charles Robb  
PCIA

Thomas Jefferson, Inc.  
3229 Waterlick Road, Lynchburg, VA 24502  
(804) 237-2044



### THE ERICSSON POSITION ON INITIATING LITIGATION

Ericsson will file a protest or commence litigation with regard to a contract award only when it has substantial reason to believe that the award was made in violation of applicable procurement laws or regulations, or was the result of improper bias or influence. No lawsuit is filed without being reviewed by legal counsel to ensure that it has a reasonable legal basis.

Ericsson does not and will not file protests or lawsuits without good cause, but it will continue to take legal action to protect itself when it has reason to believe that an award was made contrary to applicable law.

The table on the back of this document shows lawsuits initiated by Ericsson since 1/1/94. Of the five suits, Ericsson has won two, one is pending and two verdicts were rendered against Ericsson. In the two cases where Ericsson lost, the customer won the right to award the contract to the higher bidder. During the same time period, Motorola initiated one lawsuit against the City of Honolulu (even though Ericsson's bid price was \$7,000,000 lower). The Honolulu verdict was returned in favor of Ericsson.

ECR-5372



### Ericsson Lawsuits Since January 1994

Customer and Date of Lawsuit	Location	Contract Value \$	Reason for Legal Action	Outcome
City of Birmingham, 4/94	Alabama	\$11 Million	Ericsson was the low bidder by \$900,000 and was recommended by a City committee for the award. The Mayor overruled the recommendation and directed an award to Motorola because of migration to Project 25. Ericsson challenged the award because of violations of the Alabama Competitive Bid Law.	Advisory jury returns a verdict in favor of Ericsson (8/95). The Federal Judge had serious problems with the consultant's actions and nullified the City's contract with Motorola.
Guilford County, 5/94	North Carolina	\$8 Million	Ericsson was initially the low bidder. Certain bid price adjustments were made which Ericsson disputed.	Judge ruled insufficient evidence of abuse of process. Bid awarded to Motorola.
Orange County, 10/94	California	\$82 Million	Harris Corp. was the low bidder by \$8 to \$15 million and assigned its claim to Ericsson (which was to provide the trunked radio system to Harris for the County). Ericsson challenged the award because of violations of California and County procurement laws and irregularities including contacts and a business relationship between Motorola and the county's consultant.	Pending
City of San Francisco, 11/94	California	\$40 Million	After the City decided to award a city-wide radio system to Motorola without competitive bidding, Ericsson challenged the decision on grounds it violated the competitive bidding requirements of the City Charter and Administrative Code.	Federal court granted preliminary injunction that stopped procurement process.
Kansas City Board of Public Utilities, 5/95	Kansas	\$4.4 Million	Ericsson base bid was \$2.9 million, Motorola's base bid was \$4.4 million. "Evaluation adjustments" of \$2.7 million were made to Ericsson bid, \$500,000 to Motorola. Ericsson challenged propriety of adjustments.	Court upheld right of the Board of Public Utilities to "reject" Ericsson's bid.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

ERICSSON GE MOBILE  
COMMUNICATIONS, INC.,  
a Delaware Corporation,

Plaintiff,

v.

MOTOROLA COMMUNICATIONS &  
ELECTRONICS, INC., an  
Illinois Corporation and  
THE CITY OF BIRMINGHAM,  
ALABAMA, a municipal  
corporation, RICHARD  
ARRINGTON, JR., in his  
official capacity as Mayor  
of the City of Birmingham

Defendants.

CIVIL ACTION NO.

94-AR-0808-S

**ENTERED**

AUG 10 1995

ORDER

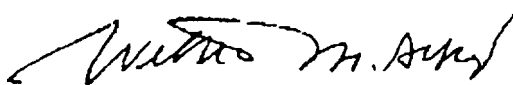
In accordance with the accompanying memorandum opinion, including its findings of fact and conclusions of law, the court hereby ORDERS, DETERMINES and DECLARES that the contract for a radio communications systems between the City of Birmingham and Motorola Communications & Electronics, Inc., is null, void and of no force and effect.

The motions filed by all parties for judgment as a matter of law pursuant to Rule 50(a), F.R.Civ.P., even if appropriate in a case tried to an advisory jury, are MOOT.



Costs are taxed against defendants.

DONE this 10<sup>th</sup> day of August, 1995.



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WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

ERICSSON GE MOBILE  
COMMUNICATIONS, INC.,  
a Delaware Corporation,

Plaintiff,

v.

MOTOROLA COMMUNICATIONS &  
ELECTRONICS, INC., an  
Illinois Corporation and  
THE CITY OF BIRMINGHAM,  
ALABAMA, a municipal  
corporation, RICHARD  
ARRINGTON, JR., in his  
official capacity as Mayor  
of the City of Birmingham

Defendants.

CIVIL ACTION NO.

94-AR-0808-S

**ENTERED**

AUG 10 1995

MEMORANDUM OPINION

In the above-captioned case, this court must decide whether or not the decision-makers who, in the aggregate, were responsible for awarding to defendant, Motorola Communications & Electronics, Inc. ("Motorola"), a multi-million-dollar contract between Motorola and defendant, City of Birmingham ("City"), for the design and installation of an 800 megahertz police, fire and emergency radio communications system were improperly influenced toward that end. Plaintiff, Ericsson GE Mobile Communications, Inc. ("EGE"), was the unsuccessful bidder and, as such, has standing to sue. EGE sues



Motorola, the City and Richard Arrington ("Arrington") who, in his capacity as mayor, was the City's chief executive officer and thus responsible under the law of Alabama for making a recommendation to the City Council as to matters of this kind. In other words, a purchase of this size could not be made by the City without Council authorization. It was the strong oral presentation and recommendation by Arrington to the Council which led the Council to grant authority to Arrington to execute the contract here being attacked as the product of improper influence. If, and only if, entering into the contract with Motorola was occasioned by improper influence, is there a variety of violation of Alabama's competitive bid law which would render the contract voidable. The court doubts that it is essential for the setting aside of the contract with Motorola that EGE have proven that improper influence was exercised or directed by Motorola itself, although the issue was framed to an advisory jury in those terms in the following single, special interrogatory:

Did plaintiff, Ericsson GE Mobile Communications, Inc., prove by a preponderance of the evidence that the decision by defendant, City of Birmingham, to enter into a contract with defendant, Motorola Communications & Electronics, Inc., for a radio communications system for the City was made as a proximate consequence of undue or improper influence by Motorola Communications & Electronics, Inc., upon the City's decision makers?

The jury answered the question "YES."

EGE's original complaint charged more than one violation of Alabama's competitive bid law. After discovery had uncovered a



number of pertinent facts, most of which were undisputed, this court certified to the Supreme Court of Alabama several questions involving the meaning and application of the law. After the core facts were hypothesized to the Supreme Court, that Court, in response, rendered a very helpful opinion on March 17, 1995. The certified questions and the answers can be found in *Ericsson GE Mobile Communications, Inc., v. Motorola Communications & Elecs., Inc.*, \_\_\_ So. 2d \_\_\_, No. 1931189, 1995 WL 111910 (Ala. Mar. 17, 1995). The said opinion effectively eliminated all except one of EGE's avenues of attack on the Motorola contract, leaving as the only viable challenge, in the words of the Supreme Court, "whether the City's exercise of discretion was based upon 'ignorance through lack of inquiry' or was 'the result of improper influence' or was otherwise arbitrary or capricious." *Id.* at \_\_\_\_\_. The Supreme Court further held that the "conduct of the City's outside consultant is relevant" to the decision on this issue, and that "the City's failure to follow the advice of its evaluation committee may also be relevant." *Id.* at \_\_\_\_\_. The Supreme Court concluded its opinion with the recognition that "these are primarily questions of fact." *Id.* at \_\_\_\_\_.

This court joins the highest court of this state in recognizing that the outcome of this controversy hinges upon the resolution of questions of disputed fact. It is for this reason that this court convened an advisory jury pursuant to Rule 39(b), F.R.Civ.P.



In this court's opinion, a petit jury is the institution in Anglo-Saxon jurisprudence best suited for deciding hotly contested disputes of fact. Even though this court is not bound by the findings of the advisory jury, such a jury is uniquely adept at looking into the minds and hearts of this diverse cast of characters, a skill helpful for ascertaining whether, in fact, improper influence tainted the City's decision in favor of Motorola. Within an hour after the case was submitted to the advisory jury, it reached the unanimous conclusion that the Motorola contract was the proximate result of improper influence to which Motorola contributed in some way. This court cannot, of course, read the jury's mind as to what it found with respect to the disputed sub-facts that led it to the ultimate fact. Neither can the court discern what the jury concluded as to the relative importance of particular sub-facts. Nevertheless, there was substantial evidence, testimonial, documentary, direct and circumstantial, upon which the jury could have reached the conclusion it reached with respect to the final and dispositive issue, and this court independently reaches the same conclusion reached by the jury.

In compliance with Rule 52(a), F.R.Civ.P., this court, itself, makes the following findings of pertinent fact and reaches the following conclusions of law based on those facts. The court appreciates the advice given it by an attentive and diligent jury despite its not being bound by that advice.



### Findings of Fact

To start with, the raw, skeletal facts reiterated in the opinion of the Supreme Court of Alabama, upon which it formulated its opinion and which are consistent with the "agreed summary" contained in the pre-trial order, are hereby adopted by this court as pertinent findings of fact.

EGE and Motorola are major designers and manufacturers of radio communication systems and equipment for use by police, fire and emergency departments of various governmental units. When a municipality the size of the City let vendors like EGE and Motorola know that it is in the market for such a system, that fact gets the vendors' "juices to flowing," and all serious competitors for the job mobilize for a highly competitive contest seeking the contract. Without sitting in judgment on the morality of the process in actual operation, vendors often seek "access" to the municipal decision-makers by employing what this court would call "influence peddlers," euphemistically called "lobbyists." Of course, the vendors also use more traditional means for getting attention, such as making sales presentations and submitting written materials.

Largely in order to insulate himself from the pressures of having to deal in a personal way with aggressive sales people representing competing vendors on such a large, important and potentially controversial project, Arrington and the City hired



Hambric & Associates ("Hambric") as a consultant to the City to assist it in preparing bid specifications and evaluating the competing bids for the proposed radio communications project. The court was never able to ascertain exactly who Alton Hambric's so-called "Associates" were, if there were any. Hambric & Associates appears to be Alton Hambric and whoever he might feel he needs as a sub-contractor or helper for a particular consulting job. The competition for the City's contract quickly narrowed to a fight between Motorola and EGE based, to a large degree, on their competing technologies or methods for accomplishing the City's goals, needs and objectives. During the process leading up to the letting of the alternative bid package, which the Supreme Court of Alabama found, in and of itself, not to violate the competitive bid law, EGE touted its APCO 16 system, while Motorola touted its APCO 25 system. Both of these systems found support in forcefully presented technical arguments during the pre-bidding process out of which the City's final request for bids evolved. The same compelling arguments for the competing technologies were presented at trial. This court does not have the ability, much less the authority, to decide, and will not express an opinion, as to which of the two technologies or systems would, or will, in fact, better serve the City's needs.

It is difficult, if not impossible, to know why Hambric became the consummate advocate for Motorola. The court also cannot know



for sure whether or not the jury found that Hambric was not credible, or was as incredible as the court found him. This court not only finds Hambric lacking in believability, but also that he is an accomplished con-artist who substantially inflated his credentials, first, in order to get the consulting contract with the City and, then, to sell his ideas to the City. Arrington and the Council believed just about everything Hambric said to advocate Motorola's APCO 25. Although equally hard to ascertain all of Hambric's motives, it is obvious to this court that Hambric was in over his head with respect to the technological aspects of this advanced, highly sophisticated, multi-million dollar project, as to which he was to "consult." Moreover, it is just as obvious that Hambric acted more as a political consultant than as a realistic source for technical or engineering analysis or advice. He was certainly not any more competent to make an intelligent and fair decision as between these competing technologies, highly advertised to provide workable systems for a big city, than was the City's purchasing agent, the City's attorney, or a lower-level, experienced person in the City's communications department. In short, Hambric came across from the witness stand as what he really is, not as what he held himself out to be.

Even assuming an unlikely fact, namely, that Hambric, with adequate expertise, reached a bona fide belief that APCO 25 was the "cutting edge," or the "wave of the future," or the "state-of-the-



art" technology, it is highly likely that such a belief was engendered or enhanced by his close personal relationship with Mark Austin ("Austin"), Motorola's lead salesperson, with whom Hambric, while acting as the City's consultant, agreed to go into business at a later date. Once Hambric, as a practical matter, joined the Motorola team, he began to shape the bidding process in Motorola's favor, and any opposition to Motorola from any actual decision-maker, except councilman Jimmy Blake (in contrast to lower level City employees), dissipated, or became nominal, and further consideration of EGE's proposal became *pro forma*. Thereafter, Hambric's activity as a "consultant," insofar as he was ostensibly evaluating EGE's proposition, took on the appearance of a charade.

Other than the fact that Hambric had a prospective business relationship with Austin, it is, as previously stated, difficult to put one's finger on Hambric's motivations, bad, good, or indifferent. Hambric's familiarity with the Motorola people was so cozy that he felt comfortable in suggesting to them that he could undertake for a fee to work for Motorola to obtain business with the Folsom administration. He also suggested to Motorola that it check with his brother's fiber optics firm for prices in order to assist it in preparing a bid that would include the fiber optics which would be needed to perform the City contract as originally negotiated. The City correctly points out that the contract, as renegotiated, eliminated the fiber optics requirement, having the



effect of wiping out the opportunity for Hambric's brother to profit as a sub-contractor. It is also true, however, that contemporaneously with the removal of the fiber optics component, Hambric & Associates was employed as a "consultant" for monitoring the implementation of the Motorola contract. Hambric's total proposed compensation as "consultant," pre-contract and during performance, is approximately \$400,000. During the negotiation of a "sole-source" contract with Motorola, Hambric was working toward obtaining the new consulting agreement for implementation. Hambric's primary interest was Hambric. Self-interest, of course, infects humankind. Everybody is not Mother Teresa. In Hambric's case, self-interest provided virtually the total impetus for whatever positions he took in the context of this controversy. After Hambric became Motorola's advocate, even though swinging between subtlety and obviousness, he worked intimately with Motorola's people in preparing the City's bid package. His contacts with Motorola consisted of working sessions designed to go somewhere. EGE had practically no access to Hambric after Hambric decided to support Motorola.

As a second mechanism for distancing himself from the pressures of overly zealous salespersons, Arrington created an ad hoc committee consisting of representatives from the various City departments which had a legitimate interest in the radio communications project. On this committee were Floyd Dyar ("Dyar"), the



City's purchasing agent, and Victor Baugh ("Baugh"), the City's director of communications. During the competition for the contract, Alexander Small ("Small"), the lead salesperson for EGE on the project, met with Baugh, who, after having requested other Motorola people to absent themselves from the room, handed Small a slip of paper containing the figure, "\$100,000," clearly suggesting that Baugh would join EGE's team for that sum. When Small refused, Baugh, who undoubtedly knew that EGE, like Motorola, from time to time used lobbyists in dealing with governmental entities like the City, introduced to Small a prospective lobbyist, who shortly thereafter crassly told Small and other EGE personnel that he could get EGE the City's job for \$1,000,000. This event tells volumes about attitude and environment.

And yet, the committee upon which Baugh served, probably because of the years of experience and the persuasiveness of Dyar, who ultimately withdrew from the entire decision-making process after saying to his superiors that he did not like the direction in which things were going, unanimously recommended that the EGE APCO 16 alternative should be accepted, it being the lower bid by \$900,000. At the time of this unanimous recommendation by the mayor's committee, its majority honestly believed, just as they asserted, that EGE was the "lowest responsible bidder" as that term is employed in the competitive bid law. Despite the committee's recommendation, Hambric and Arrington quickly won over Baugh, who



not only "saw the light" and joined the Motorola team, but who later excoriated his top two radio technicians for expressing their belief that the EGE APCO 16 concept was superior to Motorola's APCO 25, and expressing that belief to Blake, a City councilman, in response to his inquiries. He was the one councilman who, when the time came, voted against the negotiated "sole source" contract with Motorola.

The influence exerted by Hambric, direct and indirect, was crucial to, and the primary reason for, the final decision by the Council to authorize Arrington to execute the contract with Motorola. Hambric's credentials were not only misrepresented to the Council, including his claim that he had assisted in the design of equipment for the lunar landing module, but, perhaps more importantly, Hambric's written comparison of the prospective costs of maintaining the competing EGE and Motorola systems, a document skewed in favor of Motorola, was available to the Council. At trial, the testimony of Stewart Dudley, a certified public accountant, demonstrated that there were serious discrepancies in Hambric's financial projections. No refutation of the CPA's criticisms of Hambric's analysis was attempted, either by the City or by Motorola. Hambric's substantial mathematical and conceptual errors, whether or not deliberate, were calculated to persuade members of the Council, if they were interested in saving tax dollars, to vote in favor of Motorola, and to provide a persuasive



justification for negotiating the Motorola contract with a price tag considerably larger than EGE's low bid.

Not unpredictably, Arrington's recommendation to the Council was accepted. That recommendation was based almost entirely on Hambric's recommendation and not on Arrington's independent study undertaken without personal contact with either vendor and without any "hands on" background in radio communications.

#### Conclusions of Law

This court has jurisdiction over the subject matter and over the parties under 28 U.S.C. § 1332 because of the diversity of citizenship of the parties and because the amount in controversy exceeds \$50,000.

This court adopts and incorporates the opinion of the Supreme Court of Alabama in response to this court's certified questions. It elaborates pertinent portions of the law of Alabama.

Two items of evidence which the Supreme Court deemed relevant are not only relevant but are highly probative. They raised the level of proof to a standard above the required "preponderance." Even without other circumstantial evidence, the rejection of the City's own unanimous committee evaluation, and the fact that Hambric worked too closely with Motorola in preparing the City's bid documents, would have been enough to meet EGE's burden of proving by a preponderance of the evidence that the contract between the City and Motorola was the result of improper influence.



The degree to which Motorola participated in exerting that influence is a secondary issue, although there was enough evidence to meet the burden, if needed, of proving knowing participation by Motorola in the application of that undue influence.

These facts lead this court, using the language of the Supreme Court, to conclude that Arrington, or the Council, or both, "abused their discretion," or acted "arbitrarily and capriciously," or both, in approving the Motorola contract, in that the approval occurred as the result of "improper influence," or was made "out of ignorance through lack of inquiry," or both. This court finds that any "inquiry" addressed to Hambric by Arrington or by others of the lawful final decision-makers, constituted "lack of inquiry." The more technical and expensive the subject matter, the higher the degree of responsibility of a decision-maker to conduct meaningful "inquiry" and not to abdicate that responsibility or to assign it, unless to a truly knowledgeable and a truly independent, conflict-free consultant or adviser. Although a municipality certainly retains broad discretion under Alabama's competitive bid law to reject the low bid, that discretion is not unlimited. It is constrained by the obligation to act responsibly and in the best interest of the city.

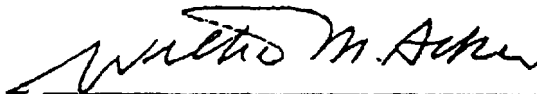
Defendants' "unclean hands" defense is rejected, not only because EGE's hands were not sufficiently soiled to form any factual basis for interposing such an equitable defense, but



because EGE has sought and here obtained only a form of limited relief that does no more than to vindicate the purposes of the competitive bid law. Under Alabama law, an unsuccessful low bidder has standing to contest in court an award to anyone alleged not to be the "lowest responsible bidder." In this case EGE has succeeded.

Based on the foregoing, a separate judgment will be entered declaring the present contract between the City and Motorola void, not any more of a pleasant final decision for this court to make than for the City or Motorola to accept.

DONE this 10<sup>th</sup> day of August, 1995.



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WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE



SOURCE:

NEW YORK STATE POLICE



DUPLICATE

FILED IN CLERK'S OFFICE  
U.S.D.C. Atlanta

MAY 05 1995

LUTHER D. THOMAS, Clerk  
By: *[Signature]* Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SOUTHERN COMPANY SERVICES, INC., )  
SOUTHERN COMMUNICATIONS SERVICES, )  
INC., ALABAMA POWER COMPANY, )  
GEORGIA POWER COMPANY, GULF )  
POWER COMPANY, MISSISSIPPI )  
POWER COMPANY, and SAVANNAH )  
ELECTRIC AND POWER COMPANY, )

Plaintiffs,

vs.

MOTOROLA, INC.,

Defendant.

CIVIL ACTION  
FILE NO. \_\_\_\_\_

1 95-CV-1164-GET

COMPLAINT

Plaintiffs Southern Company Services, Inc. ("Southern Services") and Southern Communications Services, Inc. ("Southern Communications"), sometimes collectively referred to as "Southern," and Plaintiffs Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company state the following for their Complaint against Defendant Motorola, Inc. ("Motorola"):



NATURE OF THE ACTION

1.

This case arises from Motorola's use of fraud, bait and switch tactics, breach of contract, product disparagement, and other wrongful conduct, including monopolization or attempted monopolization of the public safety radio market. Southern contracted to purchase from Motorola a new mobile radio communications system. This system was to provide mobile radio service to Southern's public utility affiliates and to allow Southern to compete in offering this service to private companies and public agencies in the Southeastern United States. Motorola induced Southern Services to enter a purchase agreement for such a system based on representations that it would provide Southern with a state-of-the-art system with specific desired functions capable of serving Southern's proposed customers and within a specified time period that would allow Southern to be first-to-market in the Southeastern United States.

2.

After the agreement was signed, Southern gradually learned of information, including failures and limitations of Motorola's technology, that had been misrepresented to and concealed from Southern and that adversely affected the functioning, features, cost, and timing of delivery of Southern's system. Moreover, Motorola has engaged in a course of misconduct which has included:



(1) failing to provide numerous significant features of Southern's system required by the agreement; (2) continued misrepresentations of the capabilities of the system and the extent of its performance under the agreement; (3) concealment of design limitations in its technology and in the system; (4) making changes to the system that adversely affect the performance and functioning of the system without advising Southern of the impact and effects thereof; (5) delaying its performance under the agreement; (6) interfering with and delaying Southern's performance under the agreement; and (7) intentionally deferring development of certain features required by its agreement with Southern.

3.

The result is that the system Motorola is providing to Southern is substantially and materially different from the one Motorola contracted to provide, will not have many of the capabilities and features required by the agreement, will cost significantly more than was anticipated, and will be completed and available for commercial operation significantly later than required by the agreement. Motorola's wrongful conduct has been intended to impair Southern's viability as a competitor in providing mobile radio communications service, including service to the public safety radio market, and has caused Southern substantial harm.



#### JURISDICTION AND VENUE

4.

This action is brought under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, and principles of common law and the laws of the States of Georgia and Illinois. The Court has jurisdiction of the subject matter and the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, 28 U.S.C. §§ 1331 and 1337, and principles of pendant jurisdiction.

5.

Motorola transacts business and is found in the state of Georgia within the meaning of 15 U.S.C. § 22. Venue is properly based in the Northern District of Georgia under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c).

#### PARTIES

6.

Southern Services is a corporation organized and existing under the laws of the State of Alabama and has offices in Atlanta, Georgia. Southern Services is a wholly owned subsidiary of The Southern Company, an electric utility registered pursuant to the Public Utility Holding Company Act of 1935. Southern Services is in the business of providing various services to its affiliated public utility companies primarily engaged in the generation, transmission and distribution of electric energy in Georgia, Alabama, Mississippi, and Florida. In 1993, Southern Services